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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/708,626	03/16/2004	Kim Kwee Ng		2625
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30823	7590	08/08/2006		
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CENTEREACH, NY 11720-3042

EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/708,626	NG, KIM KWEE	
	Examiner	Art Unit	
	Kimberly S. Smith	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 60-79 is/are pending in the application.
- 4a) Of the above claim(s) 62,64-66,69,72,73 and 77-79 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 60,61,63,67,68,70,71 and 74-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/24/06 has been entered.

Response to Arguments

2. Applicant's arguments filed 06/22/06 have been fully considered but they are not persuasive. With respect to the applicant's arguments regarding the Wilson reference discloses a gap that cannot be said to pen from an already open position, this is considered an intended use recitation with respect to the reading of the Wilson reference. The Wilson reference in fact discloses a crawl path (21) in which the insect may crawl along the crawl path towards the distal end of the path that would, due to the force of gravity, deflect and disjoint the crawl path from the enclosure thereby creating an opening at the distal end of the crawl path. While the insect using the Wilson reference may be of such size as to escape between the gaps of the crawl path, the device of Wilson no less meets the structural claim limitations. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. For clarity in the understanding of the Wilson reference, it is noted that the interior plurality of deflectable

Art Unit: 3644

strips (21) of Wilson is being read as the crawl path. The enclosure of Wilson is being read as the combination of enclosure (24) in combination with the more exterior deflectable strips (21) as shown in the Figures. With respect to the argument that the Wilson reference discloses a crawl path that closes prematurely before the insect's crawl path, it is noted that the crawl path is defined as the area in which the insect is permitted to crawl, and therefore the insect crawl path is closed at the distal end of which the insect is to crawl.

3. With respect to the Applicant's arguments regarding the teeth as shown in the Earwood's device, these arguments were addressed in the Final Rejection at Paragraph 2. The rejection is maintained.

4. The Applicant may wish to include claim limitations regarding the crawl path being formed by a first set of deflectable strips which are twisted together as a means for overcoming the prior art.

Election/Restrictions

5. Newly submitted claims 62, 64-66, 69, 72, 73 include the subject matter which was withdrawn from consideration per the originally presented claims 23, 25-28, 31, 34, 35 and 38-40. Accordingly, claims 62, 64-66, 69, 72, 73 are withdrawn from consideration as being directed to a non-elected invention per the election filed June 3, 2005.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3644

7. Claims 75 and 76 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 75 recites the limitation "said tray" in element e). There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 60, 61 and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson, US Patent 6,158,165.

Wilson discloses an insect trap comprising an aperture (19) in a hollow chamber of a trap (27), a first set of a plurality of deflectable strips (21, interior strips) constituting a crawl path, an enclosure (24) for enclosing the crawl path that closes at a distal end of the crawl path. As the enclosure narrows at the distal end of the crawl path, it therefore forms an enclosed passageway that closes at the distal end of the crawl path. Wilson further discloses an insect attractant (17).

Regarding claims 61 and 74, Wilson discloses the enclosure comprises a second set of a plurality of deflectable strips (i.e. the more exterior of the disclosed strips at 21) which form a protective cover covering the distal end of the crawl path.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 63 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson, US Patent 6,158,165 as applied to claim 60 above in view of Earwood, US Patent 1,655,361.

Wilson discloses the invention substantially as claimed. However, Wilson does not disclose the use of an array of tines mounted to the underside of the deflectable strips. Earwood teaches within the same field of endeavor the use of an array of tines (21) mounted to the underside of the deflectable strips to deter the captured animal/insect from exiting the trap. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the array of tines as taught by Earwood with the device of Wilson in order to deter the insect from exiting the trap.

With respect to claim 71, reference discussion above regarding claims 60 and 63

13. Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson, US Patent 6,158,165 as applied to claim 60 above in view of Harwoods, US Patent 4,244,135.

Wilson discloses the invention substantially as claimed including the use of an insect attractant (17). However, Wilson does not disclose the attractant being a slidable tray. Harwoods teaches within the same field of endeavor the use of a slidable tray containing attractant so as to allow for replenishment of the bait while there are still living insects within the container (column 1, lines 44-51). It would have been obvious to one having ordinary skill in the

Art Unit: 3644

art at the time the invention was made to use the tray as taught by Harwoods with the device of Wilson so as to allow for replenishment of the bait without having to wait for all of the trapped insects to die.

14. Claims 49 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Harwoods as applied to claim 67 above, and further in view of Walker, US Patent 5,896,695.

Wilson as modified discloses the invention substantially as claimed. However, Wilson as modified does not disclose a cross-wired mesh cover covering the tray. Walker teaches within the same field of endeavor the use of a cross-wired mesh cover (36) for placement over a tray in order to preclude the ingestion of the insect attractant (column 5, lines 12-15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the mesh screen as taught by Walker with the device of Wilson as modified in order to prevent the insects from ingesting the insect attractant thereby increasing the useful lifespan of the insect attractant.

Regarding claim 75, reference discussion above regarding claims 60 and 67.

15. Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson, US Patent 6,158,165 in view of Ridings, US Patent 3,996,690.

Wilson discloses the invention substantially as claimed. However, Wilson does not positively disclose the type of insect attractant to be used. Ridings teaches within the same field of endeavor the use of a hollow cartridge (8) containing segments of adhesive sticky material (18) for the attraction of insects. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the adhesive strip as taught by Ridings with the

Art Unit: 3644

device of Wilson as sticky paper is known to be a functional equivalent of any type of insect attractant (column 2, lines 24-27) and would be obvious to use such dependent upon the type of insect the users wishes to attract.

16. Claim 76 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Harwoods in view of Walker, US Patent 5,896,695 as applied to claim 75 above and further in view of Earwood, US Patent 1,655,361.

Wilson as modified discloses the invention substantially as claimed. However, Wilson as modified does not disclose the use of an array of tines mounted to the underside of the deflectable strips. Earwood teaches within the same field of endeavor the use of an array of tines (21) mounted to the underside of the deflectable strips to deter the captured animal/insect from exiting the trap. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the array of tines as taught by Earwood with the device of Wilson in order to deter the insect from exiting the trap.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kimberly S Smith
Examiner
Art Unit 3644

kss